

**STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on August 2, 2012
Sacramento, California**

PRESENT:

Art R. Carter, Chairperson
Ed Lowry, Member
Michael Wimberly, Executive Officer
Martin Fassler, Presiding Administrative Law Judge
Ursula Clemons, Presiding Administrative Law Judge
Jeff Mojcher, Chief Counsel
Kari Johnson, Industrial Relations Counsel III
Thomas Song, Industrial Relations Counsel II
Lee Berlin, Executive Secretary

MINUTES OF JULY 18, 2012:

(Approval of minutes recording actions of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the July 18, 2012 Board Meeting. Chairperson Carter seconded. The Board voted to approve the draft minutes of the July 18, 2012 Board Meeting.

ADMINISTRATIVE MATTERS:

(Information regarding the general administration of cases pending before the Appeals Board)

1. STATISTICS

(Review and discuss most current Board statistics)

ACTION: No report

2. 2012 RULEMAKING MATTERS

(Discuss potential Board rulemaking changes)

ACTION: Counsel Johnson reported that the Public Hearing on the current rulemaking package is scheduled for September 17. A Board meeting will be held on the following day, September 18.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

1. ADVISORY COMMITTEE MEETINGS—REGULATORY PROPOSALS

(Discuss planning and preparation for meeting)

ACTION: No report.

2. 2012/2013 BUDGET

(Review and discuss budget issues for the fiscal year)

ACTION: The Board discussed “mission critical” travel requirements.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: No report

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: No report.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters and news from the Department and Appeals Board.)

ACTION: Executive Officer Wimberly reported that the new Office Assistant, Monique Getts, is doing a great job. He also informed the Board that Lee Berlin passed probation.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

ACTION: Chief Counsel Mojcher reported that Counsel Thomas Song passed probation.

Any matter not completed at this meeting may be continued to subsequent meetings.

PUBLIC COMMENT:

(Public comment will be entertained during the discussion of each agenda item of the Open Meeting.)

ACTION: No report.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

TATAFU SIO DBA ALOHA CONSTRUCTION, 10-R1D5-1648 THROUGH 1650

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Chairperson Carter seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

ORDERS OF ADMINISTRATIVE LAW JUDGES:

99 CENT ONLY STORES, 11-R1D4-0043 THROUGH 0045
AMAZING CAKES, 11-R6D2-2620 AND 2621
AMERI-KLEEN BLDG SERVICES DBA SANITATION SPECIALISTS,
11-R1D2-1486 AND 1487
ANGELICA CORPORATION, 11-R1D2-1364
ARMSTRONG INTERIOR CONSTRUCTION, 11-R3D1-2629 AND 2630 *
AYALA CORPORATION, 11-R2D4-3291 THROUGH 3293
AZCONA HARVESTING, LLC, 11-R1D2-2654
ANGEL BELTRAN DBA CREATIVE DESIGN LANDSCAPE, 12-R3D3-0608
BI-CITY PAINT & BODY CO., INC., 11-R6D7-1718 AND 1719
BIG WEST DISTRIBUTION, INC., 12-R2D1-0910
CAL-COAST DAIRY SYSTEMS INC., 11-R2D1-2124 THROUGH 2126
CALIFORNIA DISTRIBUTION CENTER, LLC. 12-R3D6-0169
CALIFORNIA WATER SERVICE COMPANY, 11-R2D1-1874
CHECKSMART FINANCIAL, LLC DBA CA CHECK CASHING STORES, LLC,
12-R1D4-1622
CHECKSMART FINANCIAL, LLC DBA CA CHECK CASHING STORES, LLC,
12-R1D4-1623
CHEEMA FARMS, 11-R2D3-2501
CHURN CREEK CONSTRUCTION COMPANY, INC., 12-R2D1-1445 AND 1446 *
COLLEGEWOOD INC., 11-R2D1-1732
CONSTRUCTION PLUS, 11-R2D1-2495
COTTAGE BAKERY, INC., 11-R2D4-2825
CSU LONG BEACH, 11-R3D5-1386
DBA DAKOTA "AG" WELDING, DIV. OF JACKRABBIT, 12-R2D4-0861
THROUGH 0863
DEPALMA ORCHARDS, INC., 11-R2D1-2355
DISCOVERY FOODS, LLC, 12-R1D4-1525 *
DRILL TECH DRILLING & SHORING INC., 11-R2D3-2166 AND 2167
DUPONT POWER TOOL, 11-R2D3-1978
DURANT HARVESTING, 11-R6D2-2577
ECO BAY SERVICES INC., 11-R2D1-2454
ENGEL INSULATION, INC., 11-R2D1-1600
FIRESTONE COMPLETE AUTO CARE, 12-R1D2-1524
FOOD EQUIPMENT MANUFACTURING CO., 12-R1D2-0043
FOOTHILL PACKING INC., 11-R1D2-0866
FOSTER FARMS, INC. 12-R2D4-0885
FREEDOM INDUSTRIAL COATINGS, INC., 12-R2D1-0204 *
F.W. SPENCER & SON, INC., 11-R1D1-1327
GEORGE HOOD INC. DBA WILDCAT METALS, 11-R1D2-2089
GEORGE C. HOPKINS CONSTRUCTION CO., INC., 11-R4D2-2635
GREEN VALLEY CORPORATION DBA BARRY SWENSON BUILDER, 11-R1D2-1443

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GREEN VALLEY HARVEST, INC., 11-R1D2-2494
HARKINS THEATRES, 12-R3D6-0138
HARRISON CONTRACTING, INC., 11-R2D3-2456 THROUGH 2458
HELIX ELECTRIC, INC., 12-R2D5-0526
HNR FRAMING SYSTEMS, INC., DBA BMC SELECT, 11-R3D2-2033 THROUGH 2035
INSULATION DISTRIBUTORS, INC., 12-R6D7-0937
JAZZ GROUP, INC. IMPERIAL REPAIR GROUP, INC. DBA IMPERIAL TRUCK
WASH & REPAIR, 12-R2D4-0886 THROUGH 0888
JB PROVIDER SERVICES INC., 11-R4D1-3184
JC FARMS SERVICES, INC., 11-R2D1-2335
JMC CONSTRUCTION INC., 11-R6D7-2426 AND 2427
KNT, INC. DBA KNT MANUFACTURING, 11-R1D2-2188 THROUGH 2190
L AND R PALLETS INC., 11-R4D2-3075 AND 3076
LA TERRA FINA USA, INC., 11-R1D4-0595 THROUGH 0596
LINDA COUNTY WATER DISTRICT WASTE WATER TREATMENT PLANT,
12-R6D3-0340
LIONELLI MASONRY, INC., 11-R2D1-2998
MAGIC MOUNTAIN, LLC., 11-R4D3-3190
MANN BROTHERS, 11-R2D3-2404
VICTOR MARTELL DBA MARTELL'S AUTOMOTIVE SERVICE, 11-R6D7-3272 *
MICHAEL L MANNA RANCH, INC. DBA ACAMPO AG SERVICE, 11-R2D4-2935
NATURE QUALITY, INC., DBA NATURE QUALITY CO., 11-R1D2-3202
NORTHCOAST PARTNERS INC. DBA CRYSTAL SPRINGS BOTTLED WATER
COMPANY, 11-R2D1-1371 AND 1372
NORTH STATE GROCERY INC. DBA SAV MOR FOODS, 11-R2D3-2459
OPI PRODUCTS, INC., 11-R4D3-2304 AND 2305
TAYLOR OSBORNE DBA OSBORNE BUILDERS, 11-R2D1-2158
PASSION FRUIT FARMS, 12-R2D4-0884
PATRON PALLETS INC., 11-R4D2-3073 AND 3074
PAUL GRAHAM DRILLING, 11-R6D3-2834 AND 2835
PLANADA COMMUNITY SERVICES DISTRICT WASTEWATER, 11-R6D3-1825 *
PREMIUM RICE GROUP, LLC., 11-R2D1-1922 AND 1923
QUAIL H FARMS, 12-R2D4-0050
RAUL RAMOS JR. REALTY AND INVESTMENT PROPERTIES INC., DBA RIVER
VALLEY PROPERTY MANAGEMENT, 11-R2D1-2092
R DALEY CORP (McDONALDS STORE #24703), 11-R3D5-2363
RECOLOGY SAN FRANCISCO, 11-R1D1-0796 THROUGH 0798
RICH DOSS, INC., 11-R3D6-3228
SAFEWAY, INC. VONS DIVISION, 12-R4D3-0144 *
SAINTE PARTNERS II LP DBA KCVU FOX 30, KRVU UPN 21, 12-R2D3-0744
SALINAS FARM CONTRACTOR INC., 12-R2D4-0010 THROUGH 0012
SAL MARTINEZ FARM LABOR CONTRACTOR, 11-R2D1-2216
SANDY LODGING LLC DBA DAYS INN, 11-R2D1-2157
SEMINIS VEGETABLE SEEDS INC., 11-R2D1-2400
SIERRA PACIFIC INDUSTRIES, INC., 11-R2D1-1044 AND 1045
SOLAR TURBINES INCORPORATED 11-R6D4-1988

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SOLID PROPERTY SERVICES, 12-R3D2-0490 AND 0491
STEPHENS INSTITUTE DBA ACADEMY OF ART UNIVERSITY, 10-R1D1-3434
THROUGH 3441
STEVE GREENE CONSTRUCTION CO., 12-R4D3-0226 *
SULLIVAN COUNTER TOPS, INC., 11-R1D4-0597
TECHNION CONTRACTORS INC., 11-R4D3-2748
TERRACARE ASSOCIATES, LLC, 12-R2D1-0810
THE SUNSHINE SCHOOLHOUSE, 11-R2D1-1875
TRADEMARK CONSTRUCTION INC., 12-R4D1-0095
WALL ART VINYL, INC., DBA DEZIGN, 11-R1D1-1690
WEST 12 RANCH, 11-R2D4-0350
WEST COAST CABINET & DOORS, LLC., 11-R6D2-1898 THROUGH 1904
WESTERN SIGN & AWNING DBA WESTERN SIGN SYSTEMS, 11-R3D2-2173
WILLIAM FULLER & ASSOCIATES, INC., 10-R2D2-3871 THROUGH 3822

ZAFIRO PRODUCE, INC., 12-R3D6-0168

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Chairperson Carter seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

ECO BAY SERVICES, INC., 10-R1D1-1233 THROUGH 1236

ACTION: Member Lowry moved that the Board accept the Legal Unit's recommendation to grant this Petition for Reconsideration. Chairperson Carter seconded. The Board voted to accept the Legal Unit's recommendation to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

CA DEPT. OF FORESTRY & FIRE PROTECTION, 10-R2D1-0728
JOSH GENERAL ENGINEERING, INC., 11-R4D2-2801 AND 2802
JUSTIS ENTERPRISES DBA BILL'S ROOFING, 09-R2D1-0586

KENYON PLASTERING, INC., 10-R1D4-2710

ACTION: Member Lowry moved that the Board vote to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration. Chairperson Carter seconded. The Board voted to accept the Legal Unit's recommendation to deny these Petitions for Reconsideration.

MATTERS PENDING RECONSIDERATION:

A-1 PROTECTIVE SERVICES, INC., 10-R1D1-1592
ALLIED SALES & DISTRIBUTION, INC., 11-R6D2-0480
AC TRANSIT, 08-R1D4-0135
AGRI-VALLEY IRRIGATION, INC., 07-R2D5-3785 AND 3786
ARMOUR STEEL CO., INC., 08-R2D1-2649 THROUGH 2655
BAY AREA RAPID TRANSIT DISTRICT, 09-R2D2-1219 AND 1221
BOBERG ENGINEERING & CONTRACTING, INC., 06-R3D3-4963
BRUNTON ENTERPRISES DBA PLAS-TAL MFG. CO., 09-R6D2-2239 THROUGH 2241
BRUNTON ENTERPRISES, INC. DBA PLAS-TAL MFG. CO., 08-R3D3-3445 AND 3448
BURBANK RECYCLING, INC., 10-R4D3-0562 AND 0563
CALIFORNIA HIGHWAY PATROL, 09-R2D1-3762
C.C. MYERS, INC., 08-R1D1-952 THROUGH 955
CENTRAL VALLEY ENGINEERING & ASPHALT, INC.
08-R2D1 5001 AND 5002
COFFMAN SPECIALTIES, INC., 10-R3D3-3532
COMMERCIAL METAL FORMING, 09-R3D1-1592
CONTRA COSTA ELECTRIC, INC., 09-R1D4-3271, 3272 AND 3960
COUNTY OF LOS ANGELES DEPT. OF PUBLIC WORKS, 07-R4D2-2540
CORONADO IRRIGATION SERVICES, 09-R4D2-0385 THROUGH 0387
CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038
DAVIS DEVELOPMENT COMPANY, 10-R3D1-3360 THROUGH 3362
DELTA TRANSPORTATION, INC., 08-R2D1-4999
DENIO'S ROSEVILLE FARMERS MARKET & AUCTION INC. 11-R2D1-2431
DISTRIBUTION CENTER MANAGEMENT GROUP (DCMG), 11-R3D3-2896
DUKE PACIFIC, INC., 08-R3D3-574
EPSILON ELECTRONICS, INC. DBA POWER ACOUSTIK ELECTRONICS,
09-R6D2-2325 THROUGH 2332
EZ MIX, INC., 08-R4D3-1898
FDO INC. DBA GRAND AMERICAN DOORS, 10-R6D2-1215 THROUGH 1219
FORTUNA IRON WORKS 06-R2D3-4222
GRANITE ROCK COMPANY, 08-R1D3-3675 THROUGH 3687
HOLLINGER CONSTRUCTION INC., 11-R4D1-0891
HOME DEPOT, 10-R3D6-3284
HYDRO-SCIENCE OPERATIONS INC., 10-R1D2-0389
LAND O' LAKES PURINA FEED LLC, 08-R2D4-1843 AND 1844
LIQUIVISION TECHNOLOGY, INC., 08-R2D1-1712 THROUGH 1714
LION RAISINS, INC., 08-R2D5-2253 AND 2254
MARINE TERMINALS, 08-R6D2-1920
McPHERSON ENTERPRISES, INC., 10-R2D5-0995
MORE GUSTO CATERING DBA EL CHOLO CATERING, 10-R4D1-1298
NATIONAL STEEL AND SHIPBUILDING COMPANY, 10-R6D2-3791
ORANGE COUNTY FIRE AUTHORITY, 10-R3D1-3667
OWENS-ILLINOIS GLASS CONTAINER, INC., 09-R1D4-2021 AND 2022

PARAMOUNT FARMS, KING FACILITY, 09-R4D3-0864
PERFORMANCE CONTRACTING GROUP DBA PERFORMANCE CONTRACTING,
INC., 08-R2D1-0025 AND 0026
POUK & STEINLE, INC., 09-R3D3-0491
ROLLED STEEL PRODUCTS CORP., 10-R6D2-4047 AND 4048
JOSH AND CARRIE SALAZAR DBA CJ MANUFACTURING, 09-R6D2-1710
SAN FRANCISCO FIRE DEPARTMENT, 09-R1D1-3128 THROUGH 3131
SDCCD – CONTINUING EDUCATION N C CENTER, 11-R3D2-1196
SDUSD – PATRICK HENRY HIGH SCHOOL, 11-R3D2-1296 AND 1297
SHEEDY DRAYAGE COMPANY, 06-R1D4-3053 THROUGH 3055
SHIMMICK-OBAYASHI, 08-R3D3-5023 THROUGH 5025

SIERRA FOREST PRODUCTS, 09-R2D5-3979

ACTION: Member Lowry that the Board vote to approve an Order of Remand for this Matter Pending Reconsideration. Chairperson Carter seconded. The Board voted to approve an Order of Remand for this Matter Pending Reconsideration

SMUD, 08-R2D1-4887 THROUGH 4889
MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR,
08-R2D1-3414 THROUGH 3418
STAFFCHEX, 10-R4D3-2456 THROUGH 2458
SUNRISE GROWERES FROZ SUN FOODS, 09-R4D3-2850
A. TEICHERT & SON, INC. DBA TEICHERT AGGREGATES, 09-R5D1-2443
TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION,
05-R2D4-2650 AND 2651
A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 09-R4D5-0459
AND 0460

LEGISLATION:

ACTION: No report.

PENDING LITIGATION

1. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (DOSH v. OSHAB) (00-440)
2. XL CONSTRUCTION, 34-2009-80000300 (08- 1191/1193)
3. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
ACTION: Chief Counsel Mojcher reported on the status of this matter.
4. WEBCOR BUILDER, INC., 34-2010-80000439 (06-R1D1-3030/3032)
5. WPCS INTERNATIONAL SUI SUN CITY, INC., 34-2010-80000430 (09- 9280/9281)

ACTION: Chief Counsel Mojcher provided an update on this matter.

6. GRANITE CONSTRUCTION CO., INC., (DOSH V OSHAB) 34-2010-800006047 (07-R5D1-3611)
7. CLARK PACIFIC, A GENERAL CALIFORNIA PARTNERSHIP, 34-2010-80000640 (08-R2D1-0027 THROUGH 0030)
8. SMUD, 34-2010-80000723 (08-R2D1-4887)
9. BAY AREA RAPID TRANSIT DISTRICT, 34-2011-80000819 (08-R1D1-5170)
10. MASCON, INC., 34-2011-80000820 (08-R2D1-4178 AND 4279)
11. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, 34-2011-80000965 (10-0188~0191)
12. GUILLAUME GRAPEVINE NURSERY, INC., 34-2011-800001010 (08-R2D1-3273)
13. CA PRISON INDUSTRY AUTHORITY, CIV 1105778 (09-R1D5-2459 THROUGH 2461)
14. FLATIRON CONSTRUCTION CORP, 34-2012-800001029 (10-R4D1-2789)
15. HOLLANDER HOME FASHION, BS-135444 (10-R4D2-3704)
ACTION: Chief Counsel Mojcher reported on the status of this matter.
16. SECA EQUIPMENT REMOVAL & DISMANTLING, INC., 12CV01039 (07-R2D3-0275)
17. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)
18. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
19. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
20. DUININCK BROS., INC., 34-2012-80001129 (06-2871)

COURT OF APPEAL:

1. JERLANE, INC., D060844 (2007-00056381) (01-4344 and 4345)
ACTION: Chief Counsel Mojcher provided an update on this matter.

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PERSONNEL: *(Issues regarding staff)*

ACTION: Executive Officer Wimberly reported that a new Legal Secretary, Maria Rios, has been added to the staff in the Legal Unit.

The Closed Session adjourned at 2 p.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 2:10 p.m.